REMARKS

Claims 1-20 are pending in the application. By this Amendment, claim 16 is amended. In view of the following Remarks and the attached Declaration, Applicants respectfully request withdrawal of the rejections and allowance of the claims.

I. Allowable Subject Matter

Applicants thank the Examiner for indicating that independent claim 10 is allowed. Applicants also thank the Examiner for indicating that dependent claims 5-8 and 17-20 are allowable, and would be allowed if rewritten in independent form. However, as discussed below, the claims rejected under 35 USC §103(a) are also believed to be allowable. Accordingly, Applicants decline to rewrite these claims in independent form at this time.

II. Claims 16-20 are not indefinite

Claims 16-20 stand rejected under 35 USC §112, 2nd paragraph due to alleged lack of antecedent basis. Applicants respectfully request withdrawal of this rejection based on the foregoing amendment to claim 16. Applicants respectfully submit that the Amendment does not narrow the scope of claim 16, and thus, the *Festo* presumption against the application of the Doctrine of Equivalents does not apply.

III. Claims 1-4 and 9 would not have been obvious

Claim 1 stands rejected over Suominen (U.S. Patent Publication No. 2003/0002510) in view of Meempat et al. (U.S. Patent No. 6,778,496, hereafter "Meempat"), claims 1-4 stand rejected over Meempat in view of Conway et al. (U.S. Patent No. 6,061,331, hereafter

"Conway"), and claim 9 stands rejected over Meempat in view of Conway and Beshai et al.

(U.S. Patent No. 6,339,488, hereafter "Beshai").

Applicants note that Suominen has an effective filing date of November 30, 2000 under

35 USC §102(e). Further, Applicants note that the present application claims provisional priority

to U.S. Provisional Application No. 60/243,731, which was filed on October 30, 2000. Because

the provisional priority date of the present application antedates the effective filing date of

Suominen, Applicants respectfully submit that Suominen should be disqualified as prior art.

Accordingly, Applicants respectfully request withdrawal of the rejection over Suominen in view

of Meempat.

Additionally, Applicants respectfully submit that the Examiner's proposed combination

of Meempat and Conway fails to disclose or suggest (a) computing a provision route for non-

zero elements of a traffic matrix for at least one class in order of descending priority, and (b)

readjusting the traffic matrix in response to the computed route, as recited in claim 1.

As indicated by the Examiner, Meempat does not disclose constructing a traffic matrix

based on an estimated traffic volume. Further, because Meempat does not disclose a traffic

matrix, Meempat also cannot disclose readjusting the traffic matrix in response to the computed

provisioning route, as recited in claim 1. None of the claimed features directed to a traffic matrix

are disclosed or suggested in Meempat.

In contrast, Meempat is directed to load balancing by selecting a path having links, each

link being associated with a cost metric that can be sequentially updated. While the entire traffic

matrix of claim 1 could be updated at once (i.e., in parallel), Meempat is only directed to

updating a single link at a time (i.e., in series), and the cost information of each node is

separately updated. Thus, the structure of Meempat fails to disclose or suggest even performing

parallel updating as can be done in a matrix.

Also, as Meempat does not disclose a traffic matrix, Meempat cannot disclose

readjusting the traffic matrix in response to the computed provisioning route, as recited in claim

1. In fact, as disclosed at column 13, lines 6-9, Meempat actually *teaches away* from readjusting

a matrix.

To overcome the acknowledged deficiencies of Meempat, the Examiner proposes

combining the estimation and traffic matrix features of Conway with cost metric features of

Meempat to produce the claimed combination of features recited in claim 1. However,

Applicants respectfully submit that one of ordinary skill in the art at the time of the invention,

without the benefit of the hindsight of the exemplary embodiments in the present application,

would not have been motivated to combine Meempat with Conway to achieve the claimed

invention. For example, Applicants respectfully submit that one of ordinary skill in the art would

not have been motivated to combine the deterministic (i.e., looking backwards to obtain cost

information as the basis for forming pathways) disclosure of Meempat with the estimation-based

(looking forward to generate an estimate of traffic, and generating a matrix) disclosure of

Conway. Further, as noted above, Meempat actually *teaches away* from readjusting a matrix, and

only teaches a *static* matrix. There is no disclosure in the prior art suggesting combination of a matrix that includes estimation results into the cost metric scheme of Meempat to produce all of the claimed combination of features.

Applicants respectfully submit that dependent claims 2-4 and 9 are allowable at least due to their dependency from independent claim 1.

IV.   Claims 11-16 would not have been obvious

Claims 11, 12, 14 and 15 stand rejected due to alleged obviousness under 35 USC §103(a) over Meempat in view of Siu et al. (U.S. Patent No. 6,744,769, hereafter "Siu"), claim 13 stands rejected over Meempat in view of Siu and Beshai, and claim 16 stands rejected over Meempat in view of Siu and Conway.

With respect to the rejection of claim 11 under §103 over Meempat in view of Siu, Applicants respectfully submit that the claimed invention was conceived prior to the October 19, 2000 effective filing date of Siu. As shown on the attached Declaration under 37 CFR §1.131, the claimed invention was conceived prior to October 19, 2000 and constructively reduced to practice on October 30, 2000. Between October 19, 2000 and October 30, 2000, Applicants engaged in diligence, as disclosed on the attached Declaration under 37 CFR §1.131.

Further, Applicants respectfully submit that dependent claims 12-16 are allowable for at least the same reasons as independent claim 11, from which they depend.

Accordingly, Applicants respectfully request removal of Siu, and withdrawal of the associated rejections of claims 11-16 under §103.

Amendment Under 37 C.F.R. § 1.111
U.S. Application No. 09/897,495

V.   Conclusion

In view of the above, reconsideration and allowance of this application are now believed

to be in order, and such actions are hereby solicited. If any points remain in issue which the

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is

kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue

Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any

overpayments to said Deposit Account.

Respectfully submitted,

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